IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.426 OF 2005

In the matter of the Section 433 and 434 of the Companies Act, 1956;

And

In the matter of M/s.Layer Exports Pvt. Ltd., a Company incorporated under the Companies Act, 1956, having its registered office at 5-C, Swapnalok L. Jagmohandas Marg Mumbai 400 036.

Rajkumar Jugalkishore Saraf ..Petitioner.

M/s.Layer Exports Pvt. Ltd. ..Respondents.

Mr.R.M. Pandey i/b.M/s.M.U.Pandey & Co. for the Petitioner.

Mr.T.Subramanian i/b.M/s.Wadia Gandhy & Co. for the Respondents.

CORAM : S.J. VAZIFDAR, J.
DATED : 19TH JANUARY, 2006

P.C. :

According to the Petitioner, the company is indebted to him in the sum of about Rs.32,00,000/-.

2. The Petitioner’s claim is based on the consent terms arrived at between the parties in RAE Suit No.74/330 of 1973, clause 9 whereof reads as under :

"9. The Plaintiffs undertake to this Hon'ble Court and further declare that they shall construct and complete the new building proposed to be constructed on the said land within a period of three years from the date of defendant No.3 vacating the premises and further undertake to hand over the possession of the said flat referred to hereinabove in clause 6 to the Defendant No.3 failing which the Defendant No.3 will be entitled to payment of Rs.1,00,000/- per month till the time he is put in possession as agreed under this consent terms.

It is further agreed and understood by and between the parties hereto that if the Plaintiffs fail to provide the said flats to the Defendant No.3 within a period of 5 years from the date of Defendant No.3 vacating the premises irrespective of they having paid the compensation as aforesaid, it shall be the Option of the Defendants No.3 to either wait and take the said flats as and when constructed or to call upon the Plaintiffs t pay to him a sum of Rs.5,00,00,000/- to the Defendant No.3 within one month from the date of such demand being made. It is further agreed that in such event of the Defendant No.3 opting for the sum of Rs.5,00,00,000/- he shall not be required to pay the said sum of Rs.25,00,000/- and the same shall not be deductable or adjustable out of the said sum of Rs.5,00,00,000/- upon the payment of Rs.5,00,00,000/- being made on such demand the right of the defendant No.3 to the said 2 flats to be extinguished."

3. The debt is bona-fide disputed for two reasons. Firstly, it is certainly a probable construction that the amount of compensation of Rs.10,000/- per month is not payable in the event of the Petitioner exercising the option of receiving an a sum of Rs.5,00,00,000/- instead of possession of the said flat. The words ".....irrespective of them having paid the compensation as aforesaid....." could reasonably be construed as contemplating a situation where compensation was in fact paid. That by itself, however would not necessarily mean that even if compensation was not paid, the Petitioner would be entitled to the same in the event of his opting to accept Rs.5,00,00,000/-. In fact, the Petitioner chose the second option of accepting the amount of Rs.5,00,00,000/- instead of possession.

4. It is pertinent to note that the liability to pay Rs.1,00,000/- per month was only till the Petitioner was put in possession as agreed in the consent terms.

5. Further, it is admitted that the said amount of Rs.5,00,00,000/- was paid by the company to the Petitioner. The same was under cover of a letter

dated 3rd June, 2005 which expressly stated that the same was being paid in full and final payment of the liability of the company to the Petitioner. There was no dispute or demand regarding the same by the Petitioner at the time of acceptance of the said amount or even immediately thereafter.

In the circumstances, the Petition is dismissed.